

Harold Snyder, P.O. Box 926
(805) 929-2455, Nipomo, CA 93444

November 9, 2010

Nipomo Community Services District
148 Wilson Street
P.O. Box 326
Nipomo, CA 93444

(805) 929-1133 Phone
(805) 929-1932 Fax

Dear Don Spangnolo:

In the October 27, 2010 agenda Item E3 Consider Draft Urban Water Management Plan Update board packet there was a change in wording on page 2-10 of the draft plan:

~~NCSO's right to pump groundwater from the Santa Maria Groundwater Basin, which includes three administrative management areas, including the NMMA, is considered to be an appropriative right. Other appropriators include Golden State Water Company, Rural Water Company, the cities of Santa Maria and Guadalupe, and the cities and other public water suppliers located north of the NMMA, but still in the Basin. NCSO's appropriative right allows it to produce available groundwater surplus to the needs of overlying water producers located in the Basin, all subject to the provisions of the judgment entered in the Basin adjudication, now on appeal. Should the NMMA ever be separately adjudicated, NCSO would have the opportunity to establish prescriptive rights to pump water from the NMMA which would be of equal priority to the overlying producers' right to do so.~~

Pursuant to the Stipulation and subsequent Judgment, the NMMA TG can declare a Severe Water Shortage Condition, and the court may then order subsequent mandatory pumping restrictions on overlying landowners and/or holders of appropriative rights, including NCSO.

For the purposes of this UWMP, NCSO's appropriative access to water in the NMMA is approximated by the District's maximum annual historical pumping of 2,900 afy, since this value:

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Deleted: NCSO's right to pump groundwater from the NMMA is considered to be an appropriative right. Other appropriators in the NMMA include Golden State Water Company and Rural Water Company (Figure 1). NCSO's appropriative right allows it to pump surplus water underlying the basin so long as it is for a reasonable and beneficial use.

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2-10

I am making a public record request for a copy of the source document(s) for the added sentence:

“Should the NMMA ever be separately adjudicated, NCSO would have the opportunity to establish prescriptive rights to pump water from the NMMA which would be of equal priority to the overlying producers' right to do so.”

I am also requesting the author of the sentence

I you have any questions please let me know.

Thank You

Harold Snyder

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SERVICES DISTRICT

NIPOMO COMMUNITY

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148 SOUTH WILSON STREET POST OFFICE BOX 326 NIPOMO, CA 93444 - 0326
(805) 929-1133 FAX (805) 929-1932 Website address: ncsd.ca.gov

November 18, 2010

Harold Snyder
P.O. Box 926
Nipomo, CA 93444

**Re: Your November 9, 2010 Public Records Request to the
Nipomo Community Services District**

Dear Mr. Snyder:

Please accept this letter in response to your letter of November 9, 2010, received by the Nipomo Community Services District ("District") on November 10, 2010, which the District interprets as a request for public records. This response has been reviewed by District Legal Counsel, Jon S. Seitz, and is the person responsible for raising objections referenced in this response.

To the extent "source documents" exist, they would have been produced by attorneys retained by the District. Therefore, such source documents are not public records and will not be produced pursuant to one or more of the following grounds:

1. The attorney/client privilege found in California Evidence Code section 954 and incorporated into the Public Record Act at California Government Code section 6254(k);
2. The attorney work product rule, which covers any writing that reflects an attorney's impressions, conclusions, opinions or legal research or theories, found in California Code of Civil Procedures section 2018.030 and incorporated into the Public Records Act at California Government Code section 6254(k);
3. California Government Code section 6255, known as the deliberative process privilege, which provides that an agency may justify withholding any record by demonstrating that it falls within an express exemption or by demonstrating "that on the facts of the particular case the public interest served by not disclosing the

record clearly outweighs the public interest served by disclosure of the record." See also *Times Mirror Company v. Superior Court* (1991) 53 Cal.3d 1325, 1338. The public interest in maintaining the deliberative process reflected in any documents/opinions produced by the District's Attorneys in reviewing the Urban Water Management Plan outweighs any interest the public has in the disclosure of those opinions.

If you object to the contents of the statement:

"Should the NMMA ever be separately adjudicated, NCSD would have the opportunity to establish prescriptive rights to pump water from the NMMA which would be of equal priority to the overlying producers' right to do so."

Then please file your comment or objection to the statement, to the District, on or before the District's adoption of the final Urban Water Management Plan, and they will be included as part of the Administrative Record in adopting the Urban Water Management Plan.

Lastly, you may request the author of the noted phrase during the public comment period on the District's regular agenda.

Sincerely,

NIPOMO COMMUNITY SERVICES DISTRICT



Lisa Bognuda
Acting General Manager

cc: Jon S. Seitz, Esq.